

## Alternative Dispute Resolution: Concept and Prospect



**Dr. S.K. Singh**

Associate Professor, T.D. Law College  
Pili Kothi, Jaunpur

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*“Life is nothing but adjustment or adjustment itself is life”.*

### **Introduction**

Indian judiciary is one of the oldest judicial, a world renowned fact but nowadays it is also well-known fact that Indian judiciary is becoming inefficient to deal with pending cases, Indian courts are clogged with long unsettled cases. The scenario is that even after setting up more than a thousand fast track courts that already settled millions of cases the problem is far from being solved as pending case are still piling up.

Alternative Method of Dispute Resolution, popularly known as A.D.R. is an alternative to existing method of dispute resolution. The term ‘Alternative’ means ‘giving an option’ and ‘Dispute’ refers to a differences of opinion, resulting in differences regarding the interests, rights and liabilities of the concerned parties and so far as ‘Resolution’ is concerned, it denotes ‘solving the problems’. So ADR signifies an option to the traditional system of dispute solution.

The Alternative Dispute Resolution mechanism provide complete justice to the persons engaged in disputes. It is voluntary process, non-judicial means or as an alternative or the procedure for settlement of disputes. The alternative method of dispute resolution is being increasingly adopted as an alternative to the protracted litigation, which is a global phenomenon, the society; state and the parties to the dispute are all equally under an obligation to resolve the dispute, as in a civilized society, the rule of law should prevail and complete justice should be meted out.

Alternatives to litigative dispute resolution do not deviate completely from law and legal process, they gain negotiating strength from law,

apart from moral strength. It has some instrumental and intrinsic functions. It is instrumental in so far as it enables amicable settlement of the disputes through these means which are not generally available to the courts. It is intrinsic because it enables the parties themselves to settle their disputes.

### **History of Alternative Dispute Resolution**

In far east countries, especially China, Australia, Japan, the conciliation has been the preferred method for resolving the disputes. In England, America, the business community recognised the ADR in one form or other, is the acceptable mode of dispute resolution. It is felt that ADR is less costly, less adversative and therefore more conducive to the preservation of business relationship, which is of vital importance in business community. The use of ADR has grown tremendously in the international business during recent years due to enormous expansion of International Trade & Commerce and increased Globalisation.

In Ancient India, the resolution of disputes between members of a particular clan or occupation or between members of a particular locality by *Kulas* (assembly of members of clan); *Srenis* (guild of a particular occupation) and *Pugas* (neighbourhood assemblies) was popular everywhere. In Rural India Panchayat (assembly of indigenous and respected resident of the village) decided almost all the disputes between inhabitants of the villages. The procedure was purely informal.

The formal system of administration of justice introduced during British rule. Over the years, largely due to the development of trade and commerce Arbitration came to be recognized as an effective alternative to formal judicial system.

Due to its own merit of being adjudicatory in nature, resulting in binding decision, it become a widely practised alternative to the court system.

#### **Significance of ADR in India**

To deal with the situation of pendency of cases in courts of India. ADR plays a significant role in India by its diverse techniques. ADR mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, arbitration, conciliation, mediation, negotiation and Lok Adalat. Hence, negotiation means self-counselling between parties to resolve their dispute but it does not have any statutory recognition in India. ADR is also founded on such fundamental rights, Article 14 and 21 which deals with equality before law and right to life and personal liberty respectively. ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice and free legal aid provided under Article 39-A relating to Directive Principle of State Policy (DPSP).

#### **Need for Alternative Dispute Resolution**

The need to resort the alternatives has emerged from the problems arising out of litigation, such as, inordinate delay; escalating cost of litigation; mounting arrear of cases; pervasive corruption and inequities in the system. The demand for speedy, inexpensive, and substantial justice has been raised at all levels since independence. But the reason being that our population surged, litigations increased but there has not been corresponding increase in the number of judges and change in cumbersome adjudicatory procedure. The tremendous growth in global trade made it imperative to have the perception of an alternative dispute resolution, more particularly in matter of commercial disputes. If the country seeks foreign investment, their apprehension about litigation, must be cleared by offering them the options of a quick, easy, and uncomplicated resolution mechanism.

As the dominance of commercial elements increased and service character diminished, the profession of law and system of adjudication could not meet the growing demand for justice and thus most of the grievances were not addressed at all within reasonable time. People

were forced to search for alternatives. The ratio of judges to the population in India is undoubtedly very low as compared to the ratio in the developed countries. As a result, the justice delivery system has come under a great pressure. It is often said lawyers in this 'country also share to protracted litigation resulting back log and delay, but their role is negligible.

#### **Advantages of ADR**

Alternative dispute resolution mechanism may not only reduce the burden on the courts by providing speedy justice to the people but also are relatively inexpensive in comparison with ordinary legal process.

It can be used at any time, even when a case is pending before a court of law or disputes arise that may confer maximum advantages to the parties. ADR techniques are flexible and not afflicted with rigorous rules of procedure and can be used with or without assistance of lawyers.

ADR procedures permit the parties to choose neutrals, who are specialists in the subject matter of such disputes. This does not mean that there will be diminished role of lawyers, it helps in keeping the dispute a private matter and promotes creative and realistic business solution. ADR procedure take only a day or few days to arrive at a settlement. The confidentiality of the subject matter of the dispute is maintained to a great extent. The decision making process aims at substantial justice in form and content. Neither party loses, both the parties feel satisfaction, a win-win situation as the end of the day.

#### **Main process of ADR**

**Arbitration:** Arbitration is a mode of dispute resolution on a private basis of controversial issues, by a neutral third party, who is called Arbitrator. He is empowered to hear and consider the merits of the dispute and makes a binding decision called an Award. According to Russel, "*Essence of Arbitration is that some disputes are referred by the parties for settlement to a tribunal for their own choice instead of a court.*"

**Mediation:** It is structured negotiation process, where the mediator, third person, assists the parties to agree on their own solution to the dispute. So the mediator facilitates negotiation. Mediation is the fastest growing form of alternative dispute resolution in business today.

**Conciliation:** It is also a process of mediation used in agencies which administers rights and duties granted under legislation and in tribunals or courts. Mediation is one of the method through which conciliation is achieved. It is a nonbinding procedure, in which an impartial third party, conciliator/mediator assists the parties to a dispute in reaching mutually satisfactory and agreed-settlement of the disputes.

**Negotiation:** It is a process initiated by the parties themselves in resolving the disputes without any assistance, a disputant takes his own initiative to talk opposite party and re-establish the process of communication which is disturbed because of dispute.

ADR procedures are to be broadly divided into two categories, namely, adjudicatory and non-adjudicatory. The adjudicatory procedures such as arbitration and binding expert determination lead to a binding ruling that decides the case. The non-adjudicatory procedures contribute to the resolution of disputes by agreement of the parties without adjudication.

Of all modes of alternative dispute resolution, what method has to be adopted depends on the facts of dispute and desire of disputants. The disputants should to conscious of the end, to follow appropriate means.

#### **Lok Adalat**

Lok adalat is called 'people's court' presided over by a sitting or retired judicial officer, social activist or members of legal profession as the chairman. National Legal Service Authority (NALSA) alongwith other legal services institutions conducts lok adalats on regular intervals for exercising such jurisdiction. Any case pending in regular court or any dispute which has not been brought before any court of law can be referred to lok adalat. There is no court fees and rigid procedure followed, which makes the process fast. If any matter pending in court of referred to the lok adalat and is settled subsequently. The court fee originally paid in the court when the petition filed is also refunded back to the parties.

Parties are in direct interaction with the judge, which is not possible in regular courts. It depends on the parties if both the parties agree on case long pending in regular court can be

transferred to lok adalat. The persons deciding the cases have the role of statutory conciliators only, they can only persuade the parties to come to a conclusion for settling the dispute outside the regular court in the Lok Adalat. Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats, do not have any jurisdiction to deal with cases of non-compoundable offences.

#### **ADR in Indian Statutes**

The ADR mechanism found its firm place as a part of court- annexed alternative dispute resolution with incarnation of new section 89 by CPC. (Amendment) Act, 1999 (w.e.f. July, 2002). It refers to four forms of ADR, i.e. arbitration; conciliation; mediation and judicial settlement, including settlement through Lok Adalat.

The Supreme Court in Salem Advocate Bar Association V. Union of India, (2003) ISCC 49 not only upheld the constitutionality of the referred provision of statute but also directed framing of appropriate rules. The rules so framed by the chairman, Law Commission, Justice M. Jagnadha Rao, has been accepted by this court in Salem Advocate Bar Association, T.N. Vs union of India, (2005) 6 SCC 344 laying down that "The intention of the legislature behind enacting sec 89 is that where it appears to the court that there exists an element of settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind, so as to of opt for one or other of the four ADR methods mentioned in the section 89 and if the parties, do not agree, the court shall refer them to one or other of the said modes".

**The Industrial Disputes Act, 1947: Sec- 12-** directly encourage mediation and conciliation as means of resolving disputes concerned. The Act provides for conciliation officers and a Board of Conciliation, it also makes conciliation compulsory in all disputes (under certain condition) in public utility services and optional in respect of other industrial establishment.

**The Hindu Marriage Act, 1955:** This Act provides the provisions of the restitution of conjugal rights, judicial separation and divorce. Before granting any relief in these modes, the

court has bounden duty to make available the reconciliation process between the parties, for this, the court can take the assistance of third party, to bring about reconciliation.

**The Family Court Act, 1984:** This Act is also intended to “Promote Conciliation in and secure speedy settlement of disputes relating to the marriage and family affairs and for the matter connected with”. This statute recognizes that matrimonial disputes can and should be amicably resolved through conciliation and mediation.

**The Arbitration Act, 1940:** This Act and its subsequent replacement by the Arbitration and Conciliation Act, 1996- is a self contained code dealing with Arbitration of the disputes, domestically as well as those arising in the course of International trade, along with enforcement of foreign Arbitral award and conciliation. This Act follows the UNCITRAL model law on International Commercial Arbitration along with the UNCITRAL conciliation rules.

**The Legal Services Authorities Act, 1987:** This Act was enacted to fulfill the constitutional objective incorporated in Art 39A of the Constitution of India for ensuring that opportunities for securing justice are not denied to any citizen by the reason of economic and other disabilities. The object of this Act is to provide legal status to the institution of Lok Adalat. Which is facilitating centre of Conciliation or Negotiation and Arbitration etc, to secure speedy remedy to the problems. Lok Adalat is a tool through which the poor can secure Justice and relief without waiting for a long time and spending huge amount of money. It is an effective alternative dispute Resolution agency and can be called “People’s court verdict”.

In this system, any case pending before court or any matter within jurisdiction of a court which has not been brought before it, (other than a matter relating to an offence not compoundable in Law) may be referred for settlement to a Lok Adalat having jurisdiction over the subject matter in dispute, provided the parties to the dispute agree to the reference and where the court feels that there is a chance of settlement. A settlement arrived at by the Lok Adalat (called an award) is executed like the decree of a civil court. Against the Award no appeal can be made.

“*Delayed justice amounts to the denial of justice*”. The Alternate- Dispute Resolution mechanism helps in the realisation not only of fundamental right to speedy justice but also the enforcement of rights which gave rise to disputes.

In this way effective use of ADR system would go a long way in plugging the loopholes which is obstructing the path of justice. The concept of alternative method of resolution should be deeply ingrained in the mind of litigants, lawyers and judges to ensure that ADR methods in dispensation of justice are should be adopted. Awareness needs to be created amongst people about the utility of ADR.

The judicial infrastructures need to be modernised, viz., the computerisation of courts, online availability of relating documents etc.

The judicial academies are to be established to train the judges and reorient the judicial manpower, with latest techniques prevalent in other parts of world. The setting up of the National judicial Academy at Bhopal under the control of Supreme Court of India, is an attempt in this regard.

The Bar in this country needs to rise and pay its role more effectively in preserving the faith and trust of the litigating public in this institution at any cost. The lawyers all over the country will have to shoulder the responsibility in making ADR mechanism successful. The litigation needs active intervention of Lawyers, mediators, conciliators and arbitrators to achieve speedy disposal of pending cases to reduce the burden of court, expenditure of litigants and these can be possible only with the support of Bar. In this regard the noble expression of Abraham Lincoln is of worth mentioning that the “Discourage litigation, persuade you neighbours to compromise whenever you can, point out to them, how the nominal winner is often a real loser-in fees, expenses, and waste of time. As a pacemaker, the lawyer has a superior opportunity of being a good man”.

In Maharashtra, the Bombay University has started a regular course of study in Mediation and Conciliation. Some more universities in the country are going to start a regular course relating to the ADR.

It is apex time for all institutions imparting legal education to understand the utility and benefit of ADR teaching. Just recently Bar Council of India

prescribed ADR as compulsory clinical paper in LLB course.

Lastly I would like to quote Benjamine Cardozo, the great American judge observed - *“The inn that shelters for the night is not the journey’s end. The law like the traveller, must be ready for tomorrow.”*

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